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No. 84-887

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

STATE OF CONNECTICUT,
Petitioner,
v.
DONALD COUTURE,
Respondent.

On Writ of Certiorari to the
Supreme Court of the State of Connecticut

BRIEF IN OPPOSTION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the decision of the Connecticut Supreme Court in the case at bar was based on the Connecticut State Constitution and thus does not involve any question of federal law?

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STATEMENT OF THE CASE

Donald Couture was convicted of murder following a lengthy trial in the Connecticut Superior Court for the Judicial District of Waterbury. On appeal, he raised a number of Federal Constitutional

claims. Without exception, the Connecticut Supreme Court rejected each and every one of those claims. The Supreme Court of Connecticut did, however, reverse the conviction because of outrageous misconduct of the prosecutor during his summation. The reversal was based solely and exclusively upon the due process clause of the Connecticut Constitution, Article I, Section 8.

The summation delivered at the trial of this case by Assistant State's Attorney Walter H. Scanlon is probably the most inflamatory and irrelevant summation ever recorded. Mr. Couture's attorney objected 13 times during Attorney Scanlon's opening summation to the improper argument and on only two occasions was his objection sustained--when Attorney Scanlon asked the jury to draw an unfavorable inference from

Couture's failure to testify (1/12/82 Tr. pp. 27-36-27-39) and one of the times he called Mr. Couture and his co-defendant "thieves." (Id. at p. 27-35) In addition, immediately upon the conclusion of Attorney Scanlon's opening summation, Couture moved in the absence of the jury for, alternatively, a mistrial or to strike the entire summation or for immediate and strongly-worded currative instructions. (Id. pp. 27-50-27-57) All three motions were summarily denied. (Id. at p. 27-57)

Attorney Scanlon's opening sentence of his opening summation set the tone for what would follow: "Edward Cody, Leslie Clark and William West. The brutal murders of those three men by these two cowards--that is what this case is all about." Id. p. 27-7) The remainder of the summation, delivered from a prepared text, at high

volume and frequently enlivened by gestures toward the defendants, followed the same format. The following highlights of the summation do not by any means exhaust the improprieties perpetrated by the prosecutor:

> I implore you not to forget for one minute that we...have been bound together for these many weeks because the lives of three good men...were literally sacrificed to satisfy the greed of two murderous fiends. (Id. at p. 27-8)

> We stand before you as the lawyers for the people of this State of Connecticut, who have thus been victimized and made less human by these horrible murders. Now, as representatives of all of the people, we represent everyone in this courtroom, including each and every one of you, ladies and gentlemen....(Id. at p. 27-10)

> Now, it did not take you long, did it, ladies and gentlemen, to discover that this was not a case about cats and mice. No, ladies and gentlemen. It was a case about rats. And, what else would you call some people who would lay in wait and shoot three men in the back except maybe cowards. And, these cowards have sat amongst you for these

many weeks, and they sit right over there now awaiting your judgment. (Id. at p. 27-12)

After asking the dutiful wife a number of questions, the officers walked through the kitchen and entered the bedroom and found Couture beneath the bed garbed in only a pair of shorts, the macho, despicable coward number one. [Motion to strike denied] Shortly after the discovery of this despicable little man under his nuptial bed, Lieutenant Bochicchio and other officers in the bedroom heard someone yell, 'We found it,' or "We found the money." (Id. at pp. 27-24-27-25)

[T]hey are cold blooded and utterly merciless killers that took the lives of three good, decent and hard working men as they performed their worldly toils at their place of employment...What kind of person would lay in wait and attack three unsuspecting and almost defenseless men and shoot them in the back? They must be the most inhumane, unfeeling and reprehensible creatures that God has damned to set loose upon us. They are undoubtedly -- [objection overruled] -- of abject cruelty, and the cruel reminder to all of us as to just what lengths some persons will go to to satisfy their unchecked avarices. These heinous and unspeakable crimes were the product of the greed of Lawrence Pelletier and Donald Couture.

> And, their lust for money cost us, our society, the laughter and the joy, tears and the sorrow, the dreams and the hopes, the work and the contributions of Edward Coady, Leslie Clark and William West. The quintessence of inhumanity was reached in this case, ladies and gentlemen, by two utterly reprehensible persons who obviously felt that the lives of three innocent men, three men they never even knew, should be sacrificed so they could satisfy their insatiable greed. (Id. at pp. 27-35 - 27-36)

Holding that "the prosecutor's prepared remarks were deliberate, facially improper, persistent and pronounced" the Connecticut Supreme Court reversed the respondent's conviction under the authority of Article I, Section 8, of the Connecticut Constitution. On that issue, the State of Connecticut now petitions this Court for a writ of certiorari.

ARGUMENT

The Decision Of The Connecticut Supreme Court That The Prosecutor's Summation Remarks Deprived The Respondent Of A Fair Trial Was Based Solely On Connecticut State Law Grounds.

The decision of the Connecticut Supreme Court reversing respondent's conviction did not once even mention the United States Constitution. The decision was expressly based entirely upon the due process clause of the Connecticut Constitution. Referring to "our Constitution" the Court went out of its way to verbatim the Constitutional provision upon which it relied. The provision is from Article I, Section 8, of the Connecticut Constitution.

The Connecticut Supreme Court relied almost entirely upon other Connecticut

State cases and those cases uniformly omit any mention of the United States Constitution or of federal law. Without exception, the case is relied upon by the Court in the present decision speak entirely in terms of State law. E.g., State v. Haffner, 168 Conn. 230, 362 A.2d. 925, 934, cert denied, 423 U.S. 851 (1975) ("The Rule in this State...."); State v. Ubaldi, 190 Conn. 559, 462 A.2d 1001, 1004 (1983) ("The General Rule in Connecticut....").

This Court has no power to review decisions of a state court interpreting state law. In this case, the Connecticut Supreme Court went out of its way to make it clear that its decision was based only on State law and on no other law. This Court, therefore, has no jurisdiction of the matter.

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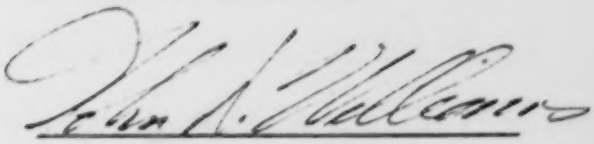
CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,



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